

EXHIBIT U

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

EQUAL EMPLOYMENT :
OPPORTUNITY COMMISSION :
 :
vs. : Case No.
 : WDQ-0-CV-648
LA WEIGHT LOSS, INC. :

February 2, 2006

Oral Deposition of NICOLA M.
FRYER, 30(b)(6) witness for LA Weight
Loss, Inc., held in the offices of the
Equal Employment Opportunity Commission,
4th Floor, The Bourse Building,
Philadelphia, Pennsylvania 19106,
beginning at approximately 2:00 p.m.,
before Ann V. Kaufmann, a Registered
Professional Reporter, Certified
Realtime Reporter, Approved Reporter of
the U.S. District Court, and a Notary
Public of the Commonwealth of
Pennsylvania.

ESQUIRE DEPOSITION SERVICES
1600 John F. Kennedy Boulevard
Four Penn Center, 12th Floor
Philadelphia, Pennsylvania 19103
(215) 988-9191

Nicola M. Fryer

Page 6

Page 8

1 before, Ms. Fryer?
 2 A. No.
 3 Q. Having said that, have you
 4 been involved in producing electronic
 5 recruiting materials to the EEOC in this
 6 case?
 7 A. Minimally.
 8 Q. Okay. You are familiar
 9 with a recruiting database that is
 10 currently kept at LA Weight Loss in
 11 Microsoft Office Access format?
 12 A. Yes.
 13 Q. What is the name of that
 14 database as it is used in-house? What
 15 will you call it?
 16 A. What do we call it?
 17 Q. Yes.
 18 A. Or what's its file name?
 19 Q. Well, tell me what you call
 20 it.
 21 A. The database.
 22 Q. Just the database?
 23 A. Yes.
 24 Q. Okay. Then I will refer to

1 able to access it?
 2 A. The recruiters, the admin,
 3 myself, the accounting manager, and a
 4 financial analyst.
 5 Q. Who is the financial
 6 analyst?
 7 A. Jose Porras.
 8 Q. Have there been any
 9 predecessors to Mr. Porras?
 10 A. Yes. There was a Michael
 11 Long.
 12 Q. Did he also have access to
 13 the database?
 14 A. He did.
 15 Q. Who are the current admin
 16 personnel?
 17 A. Lauren Toft-Donohue,
 18 D-O-N-O-H-U-E.
 19 Q. And has she been the admin
 20 person with access to the database since
 21 the start of its use?
 22 A. Yes.
 23 Q. She is HR admin; correct?
 24 A. Yes.

Page 7

Page 9

1 it from now on as the database; okay?
 2 A. Okay.
 3 Q. I want to sort of shortcut
 4 some of this stuff, so I will ask you
 5 pretty direct questions.
 6 Is it true that that system
 7 has been in place since the fourth
 8 quarter of 2004?
 9 A. It may have been used in
 10 September of '04, but definitely by the
 11 fourth quarter of '04.
 12 Q. Okay. So possibly
 13 September but not earlier than September
 14 of 2004; correct?
 15 A. I don't believe so.
 16 Q. Certainly not earlier than
 17 the summer of 2004?
 18 A. No.
 19 Q. What is the purpose for the
 20 database?
 21 A. To track and manage our
 22 recruitment process.
 23 Q. Within LA Weight Loss who
 24 has access to that database? Who was

1 Q. She is in human resources?
 2 A. Correct.
 3 Q. Regarding the individuals
 4 that you listed, the admin, the
 5 financial analyst, the recruiters, as
 6 well as yourself and Ms. Siegel, are
 7 there any restrictions on what parts of
 8 the database that any of those
 9 individuals have access to? Are there
 10 any limitations on any of those people?
 11 A. I just want to correct. I
 12 didn't say Ms. Siegel and I don't
 13 believe it is on Ms. Siegel's machine.
 14 Q. Okay.
 15 A. Is there any limitations to
 16 what they can access? No.
 17 Q. Okay.
 18 A. Let me correct that. There
 19 is a front end and a back end. The
 20 recruiters, myself, and Lauren do not
 21 have access to the back end. We only
 22 have access to the front end to enter
 23 information.
 24 Q. Tell me what the back end

3 (Pages 6 to 9)

Nicola M. Fryer

Page 22

Page 24

1 it happens so infrequently, I'm not
2 sure.

3 Q. I'm trying to think of
4 other reasons why someone might be in
5 the Rejected folder. Tell me if this
6 has ever happened. Have there ever been
7 occasions where the company did a
8 posting, as of fourth quarter of '04 --
9 well, first, let me back up.

10 This system of keeping
11 candidates in these respective
12 folders -- Pre-Screen Good, Pre-Screen
13 Rejected, and Rejected -- this is
14 something that was adopted during the
15 same time frame as the database;
16 correct?

17 A. Correct.

18 Q. Okay. Since the time of
19 adopting this system of keeping
20 candidate information, have there been
21 occasions where a job was posted, people
22 responded, and then there was a
23 determination made that the company
24 wasn't going to fill that job?

Page 23

1 A. Yes.

2 Q. Okay. In those
3 circumstances what happens to the
4 applications? When I say
5 "applications," I mean any materials
6 received electronically or from other
7 source from a candidate.

8 A. They will still be
9 evaluated. And if it is someone that
10 the recruiter would be interested in
11 calling, they would be placed in a keep-
12 on file. They are instructed to set up
13 a keep-on file personal folder in their
14 Outlook.

15 Q. Okay. Do you know whether
16 the recruiters have in fact done that?

17 A. They will only do it if it
18 happens.

19 Q. Do you know of any specific
20 instance where that has been done?

21 A. I haven't seen it, no.

22 MR. PHILLIPS: To the extent
23 there are keep-on file folders that are
24 kept by recruiters or anyone else at LA

1 Weight Loss, we would request production
2 of those in electronic form.

3 THE WITNESS: They would
4 have been included in the recruiters'
5 e-mails.

6 BY MR. PHILLIPS:

7 Q. In the recruiter e-mails?

8 A. Uh-huh, that you received.

9 Q. How would those folders be
10 included? I'm not talking about the
11 underlying materials that go in the
12 folder; I'm talking about the folder
13 itself.

14 A. It's a personal folder,
15 it's electronic, and it's in their
16 Outlook.

17 Q. Okay.

18 A. I don't know if you are
19 familiar with them personally, but there
20 are personal folders set up. And if one
21 exists, it would be in those personal
22 folders which were already sent over.

23 Q. I will have to review our
24 materials, because I'm not sure that I

Page 25

1 recall getting production of any e-mails
2 from the actual recruiters themselves or
3 any of their e-mail databases or
4 accounts.

5 Pre-Screen Rejected, as
6 we've already talked about, those are
7 the individuals who have in fact been
8 telephone-screened?

9 A. Correct.

10 Q. And are the recruiters
11 given instructions on how to determine
12 whether someone should go into that
13 category? Is there a set of
14 instructions anywhere that shows them
15 how to do that? Like is there a
16 pre-screening manual?

17 A. There's just a recruitment
18 training manual.

19 Q. Do you know when that
20 recruitment training manual was
21 published?

22 MR. WETCHLER: You have to
23 answer in words. You are shaking your
24 head.

7 (Pages 22 to 25)

Nicola M. Fryer

Page 46

1 We talked about employee referrals, we
2 talked about walk-ins, and we talked
3 about people who actually went through
4 the Recruiting Department.

5 A. An example is -- I can
6 think of is occasionally a client may
7 turn into an employee. That may not be
8 reflected here.

9 Q. So a client who applied out
10 in the field?

11 A. Correct.

12 Q. Can you think of any other
13 examples?

14 A. Not off the top of my head.

15 Q. Is there any separate
16 tracking system for individuals who
17 apply out in the field and have not gone
18 through a recruiter?

19 A. There is no electronic
20 format, no.

21 Q. Is there paper?

22 A. They would send an
23 application and it would be retained or
24 whatever information they submitted to

Page 48

1 this table, Applicants table?

2 A. What do you mean by "data
3 codes"?

4 Q. I mean the electronic data
5 that appears as symbols, like A-A-R-O-N,
6 Aaron Clegg. I mean the information.
7 Does anyone else fill information out in
8 this table other than the recruiters?

9 A. Lauren Toft, the
10 administrative assistant.

11 Q. Under what circumstances?

12 A. She enters the feedback if
13 they were interviewed.

14 Q. I see. How is that
15 information transmitted to her?

16 A. Either through e-mail or
17 verbally.

18 Q. Who is the source of that
19 information?

20 A. The interviewer.

21 Q. Okay. So the person out in
22 the field doing the hiring?

23 A. Correct.

24 Q. I want to go through some

Page 47

1 the field.

2 Q. This table Applicants, has
3 this been continuously in use since the
4 Access database was created?

5 A. Yes.

6 Q. I'm not talking about the
7 back end or the data fields -- and by
8 "fields" here I'm referring to Name ID,
9 Date, Name, Phone #, those are the
10 fields -- but the actual data elements
11 contained in each field. Who does the
12 entry for those?

13 A. The recruiters.

14 Q. What instructions are they
15 given for the data entry on this table?

16 A. To enter as much of the
17 information as they receive from the
18 applicant.

19 Q. And they are required to
20 enter all of the applicants that they
21 process?

22 A. Yes, they are.

23 Q. Other than the recruiters,
24 does anyone else enter data codes into

Page 49

1 of the data fields or headings or column
2 headings and ask you questions about
3 that. There's a heading here that says
4 Name ID. Do you see that?

5 A. Yes.

6 Q. What is that?

7 A. That is a record number
8 that is automatically assigned by
9 Access.

10 Q. Okay. Is it assigned in
11 numerical sequence, one, two, three, and
12 so on?

13 A. Yes.

14 Q. So this isn't a randomized
15 number; it is one that is done in
16 sequence of time?

17 A. Correct.

18 Q. So, for example, you see
19 where it says Aaron Gomez, the fourth
20 line down?

21 A. Yes.

22 Q. Row, I should say. And you
23 see the Name ID 93?

24 A. Yes.

13 (Pages 46 to 49)